impose other obligations on national DBS services as called for by the commenters, but has not done so. The fact that Congress opted to impose other requirements on essentially local open video systems ("OVS") as part of the 1996 Telecom Act, but not on DBS (or other emerging entrants in the MVPD marketplace), underscores a Congressional intent not to impose other specific burdens on DBS service.[54]

Less than two years ago, the Commission considered and rejected as unnecessary a variety of service rules for DBS, including marketing exclusivity, program access, general spectrum aggregation, and cross-ownership.[55] Given the consistency of the nature of DBS service offerings since the conclusion of that rule-making, the commenters do not demonstrate any change in circumstances that would warrant imposition of any additional rules.

Therefore, the Commission should continue its course of regulating DBS as a separate and unique service. To promote the benefits that flow from DBS, the Commission should not impose additional regulatory obligations to "accommodate local concerns" or to require operators to provide local service to individual communities.[56] In particular, the Commission should reject the requests of SCBA to mandate use of full-CONUS facilities to retransmit

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[54] See Time Warner at 9-10 (noting regulatory requirements for OVS imposed by the 1996 Telecom Act). Indeed, in permitting telephone companies to provide video programming services, the 1996 Telecom Act specifies that the mode of regulation depends on the type of distribution service used to enter the market - e.g., as common carrier, cable, wireless cable, or OVS operator. See 47 U.S.C. § 571(a).

[55] Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 9712 (1995), aff'd, DIRECTV, Inc. v. FCC, No. 96-1001 (D.C. Cir. April 18, 1997).

[56] TEMPO at 20-21; PRIMESTAR at 11-12.

broadcast television signals to local markets.[57] As TEMPO noted previously, such a requirement would result in an extremely inefficient and costly use of spectrum resources.[58] Accordingly, the Commission should adopt its tentative conclusion that "other regulations should not be considered in this area given that DBS is a fledging industry and that there is an abundance of local broadcast stations and cable television systems that are already serving local needs."[59]

IV. THE COMMISSION SHOULD TAILOR POLITICAL ADVERTISING RULES AND POLICIES TO ACCOUNT FOR THE UNIQUE, NATIONAL MULTICHANNEL NATURE OF DBS SERVICE

There is significant agreement in the record that the Commission should carefully adapt the reasonable access and equal opportunities provisions of Section 25 to address the significant differences between cable and television broadcast stations, for which existing rules were developed, and the multichannel national service of DBS. Thus, the weight of the comments demonstrates that: 1) DBS providers should provide reasonable access to federal candidates for national office, i.e., offices of the President and Vice President, consistent with

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[57] SCBA at 18.

[58] TEMPO at 20. Alliance/NATOA urge the Commission "to require that some 'spot beam' transponder capacity be allocated for local and regional noncommercial educational and informational programming." Alliance/NATOA at 5. To the extent Alliance/NATOA seek a specific obligation on all DBS providers to modify or implement systems to provide local service, the Commission should reject the request.

[59] NPRM, 8 FCC Rcd at 1596. SCBA urges the Commission to authorize any person allegedly aggrieved by the conduct of a DBS operator to bring a private cause of action and to recover statutory damages and attorneys' fees. SCBA at 31-32. However, the Commission has ample enforcement authority to ensure compliance by DBS operators. Moreover, SCBA points to nothing in Section 25 that suggests Congress intended to create private causes of action.

Commission precedent; 2) reasonable access should not extend to a right to all program services; 3) equal opportunity would be satisfied by providing candidates with access to any program channel with a comparable audience size; and 4) a DBS provider should have the discretion, but not the requirement, to designate particular channels for political advertising.[60]

DAETC agrees that DBS providers do not have an obligation to grant access to particular times or programs, and that providers can satisfy the requirement by ensuring that the candidate receives access to an audience of comparable size.[61] DAETC claims, however, that reasonable access and equal opportunities should be available to all federal, not just national, candidates.[62] To the contrary, the comments made clear that limiting access only to candidates for national federal office would be appropriate and consistent with Commission precedent. Conferring rights of access on potentially hundreds of candidates could be unnecessarily burdensome by requiring the use of national resources to provide a service that is of purely local interest.[63] Moreover, in an analogous context, the Commission has previously determined that reasonable access "need not be honored unless the presidential candidate involved is qualified *nationwide*."[64]

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[60] See Comments of Home Box Office, MM Docket No. 93-25, 8-9 (filed April 28, 1997) ("HBO"); TEMPO at 16-19; PRIMESTAR at 7-11; DIRECTV at 19-20.

[61] DAETC at 8-9.

[62] Id.

[63] See DIRECTV at 6.

[64] NPRM, 8 FCC Rcd 1594 n.27 (citing Carter-Mondale Presidential Committee, 74 FCC 2d 628 (1979) (emphasis added)).

DAETC also argues that the Commission should *compel* DBS operators to enter into contracts with program providers that grant the operator the right to insert candidate advertisements. The Commission also is asked to preempt any contract that prevents a DBS provider from granting access by a candidate to a program service.[65] DAETC offers no plausible rationale to support such intrusion into the private contractual relationships between DBS providers and program suppliers. Nor does it demonstrate that such an onerous obligation is necessary to enable a DBS provider to comply with statutory requirements. Indeed, imposition of such a rule could cause significant disruption to program services. For example, HBO notes that premium services are marketed on a subscription basis and contain no commercial advertisements, which is critical to building a "brand identity" with subscribers.[66] HBO states that "political advertising obligations are fundamentally inconsistent with that identity."[67] Accordingly, the Commission should refrain from dictating the terms of program contracts.

V. CONCLUSION

The comments in this proceeding demonstrate that the Commission should maintain its historical and well-reasoned approach of avoiding unnecessary regulation of the developing DBS industry. Indeed, the emerging success of DBS today is directly attributable to the flexibility afforded to DBS to offer creative program services consistent with statutory

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[65] DAETC at 9.

[66] HBO at 8.

[67] Id.

mandates. Commenters seeking a more intrusive approach in this proceeding do not justify such a marked departure from the Commission's proven track record.

The weight of the comments show that DBS providers can fulfill the statutory objective of distributing educational and informational programming by reserving four percent of their channel capacity. Commenters seeking a greater burden ignore the still-developing nature of DBS service in the interest of promoting particular programming or hindering DBS. Further, the availability of capacity for educational and informational programming will grow through marketplace dynamics – such as improvements in compression technology – without the need for any greater regulatory intervention. Accordingly, there is no need for the Commission to impose any obligations greater than a four percent set-aside to accomplish legislative aims.

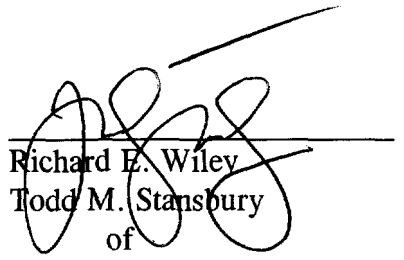
The record also shows that the public interest can best be served by affording DBS operators flexibility in the selection of programmers and program placement, fostering innovative DBS provider-program supplier relationships, and avoiding undue economic burdens on providers. Through these means, educational and informational programming from a wide variety of program suppliers can be distributed and marketed to subscribers in a manner that is best suited to address their needs.

The comments demonstrate that no further public interest or programming obligations should be imposed on DBS. Due to the unique status of DBS as a national distribution system with its own set of public interest obligations, the Commission should reject calls to impose on DBS additional requirements tailored to other mass media. The Commission should not tamper with success by saddling a growing service with unnecessary burdens. Finally, political advertising rules should be carefully crafted to account for the national, multichannel nature of DBS.

By minimizing regulatory obligations and maximizing flexibility, the Commission can further the goal of Section 25 to promote the distribution of educational and informational programming from a wide variety of program sources via DBS.

Respectfully submitted,

TEMPO SATELLITE, INC.

By: 

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